

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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INDYMAC BANK, F.S.B.,

Case No. 08CV00873 (AKH)

Plaintiff,

-against-

**ANSWER**

STEWART TITLE INSURANCE COMPANY,

Defendant.

-----X

Defendant, STEWART TITLE INSURANCE COMPANY, by its attorneys, L'Abbate, Balkan, Colavita & Contini, LLP as and for its Answer to the Complaint states as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the statements set forth in paragraphs of the Complaint designated "1", "3", "4", "5", "6", "13", "14", "16", "19", "20", and "21".
2. Denies the truth of the statements set forth in paragraphs of the Complaint designated "22", "23", "24", "26", "27", and "28".
3. Respectfully refers to the court the Policy obligations alleged in paragraphs "12" "17", and "18" of the Complaint.
4. Realleges each denial or denial of knowledge of information to the restated paragraphs alleged in paragraphs "15" and "25" of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

5. Upon information and belief, in the event plaintiff purchased the Note and Mortgage, it did so with knowledge of the alleged fraud.

6. By reason of the foregoing, plaintiff may not recover on the Policy of Insurance as alleged in the Complaint.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

7. Upon information and belief, plaintiff table-funded the Mohammed loan for Residential Home Funding Corp.

8. Upon information and belief, the closing attorney for the Mohammed loan as alleged in the Complaint was plaintiff's agent and acted on behalf of plaintiff.

9. Upon information and belief, the closing attorney for the Mohammed loan caused, suffered, contributed to, and negligently permitted the fraud to be completed.

10. By reason of the foregoing, plaintiff is not entitled to recover on the Policy of Insurance as alleged in the Complaint.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

11. Upon information and belief, in the event plaintiff purchased the Note and Mortgage, it did so with knowledge of the fraud alleged in the Complaint.

12. Upon information and belief, the closing attorney for the Mohammed loan as alleged in the Complaint, acted as agent for and on behalf of Residential Home Funding Corp.

13. Upon information and belief, the closing attorney for the Mohammed loan caused, suffered, contributed to, and negligently permitted the fraud to be completed.

14. By reason of the foregoing, plaintiff is not entitled to recover under the Policy of Insurance as alleged in the Complaint.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

15. Upon information and belief, plaintiff failed to provide defendant with proof of ownership of the Note, Mortgage, or Policy of Insurance sued upon herein prior to the commencement of this action.

16. Upon information and belief, plaintiff failed to satisfy all conditions necessary to notify defendant that it may be entitled to recover a loss under a Policy of Insurance issued by defendant.

17. By reason thereof, in the event plaintiff is found to have sustained a loss covered by a Policy of Insurance issued by defendant, plaintiff is not entitled to damages for Bad Faith as alleged.

WHEREFORE, it is respectfully requested that the Court dismiss the Complaint in its entirety and for such other and further relief this Court deems just and proper.

Dated: March 18, 2008  
Garden City, New York

Yours etc.,

L'Abbate, Balkan, Colavita  
& Contini, LLP  
Attorneys for Defendant



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Yong Hak Kim (of counsel)  
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CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2008, I served the Answer in accordance with the Federal Rules of Civil Procedure, and or the Southern District's Local Rules, and/or the Southern District's Rules on Service upon the following parties:

Feldman Weinstein & Smith LLP  
Eric Weinstein (EW 5423)  
David J. Galalis (DG 1654)  
Yong Hak Kim (of counsel)  
Attorneys for Plaintiff  
420 Lexington Avenue, Ste 2620  
New York, NY 10170  
(212) 869-7000



Richard Metli

Sworn to before me this  
18<sup>th</sup> day of March, 2008.



Notary Public

MARIA CUCCURULLO  
Notary Public, State of New York  
No. 01CU5081647  
Qualified in Suffolk County  
Commission Expires July 7, 2011